

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERT AYUNGON, ACCUSED-APPELLANT.

G.R. No. 137752. June 19, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the Decision[1] of the Regional Trial Court of Rizal, Branch 76, in Criminal Case No. 3498-98, convicting accused-appellant of rape and sentencing him to suffer the penalty of reclusion perpetua, allegedly committed as follows -

That on or about the 16th day of February 1998 in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of threats, force and intimidation, armed with a knife and with lewd design or intent to cause or gratify his sexual desire of (sic) abuse, humiliate or degrade complainant, did then and there wilfully, unlawfully and feloniously have sexual intercourse with CARLALYN BARGOS y SANTOS, a minor sixteen (16) years old without her consent and against her will.

CONTRARY TO LAW.[2]

On March 5, 1998, accused-appellant was arraigned and pleaded not guilty;[3] whereupon, his trial ensued.

Synthesized from the testimonies of the victim, then sixteen (16) year-old and third year high school student, Carlalyn Bargos; her sister, eighteen (18) year-old Cristina Bargos; and her mother, Corazon Bargos, 39 years old and a widow, are the following facts:

On the night of February 15, 1998, through the early morning of the following day, Carlalyn, Cristina and Corazon were sleeping in their room adjacent to the kitchen. The room had no light, but was illuminated by the fluorescent lamp in the kitchen which shines through the doorway. Carlalyn was sleeping on the floor covered with a mat, and was nearest to the doorway leading to the kitchen. To her right were her sister and her mother.[4]

At about 4:30 in the morning of February 16, 1998, Carlalyn was awakened as she felt somebody touching her sex organ. She opened her eyes and saw accused-appellant pointing a knife on her neck. He told her not to shout and forthwith covered her face with a pillow.[5]

Accused-appellant asked Carlalyn to take off her shorts and panties. Carlalyn refused, so accused-appellant forcibly removed them. Her strength was no match to the brute power of accused-appellant who succeeded in inserting his penis into her vagina. She felt a sudden onslaught of pain and tried hard to resist but to no avail. Accused-appellant then raised her shirt, kissed her breasts, and threatened to kill her. Every time Carlalyn would move, accused-appellant would press the knife on her neck and would say, "Pare kunin mo nga ang itak, pag hindi umayos, tatapusin ko na ito." Carlalyn saw, however, that accused-appellant actually had no companion.[6]

After several attempts to reach her sister, Cristina, Carlalyn was able to cry out loud, which woke her sister up. Cristina saw accused-appellant on top of her sister, thrusting up and down. Cristina was a foot away from

Carlalyn and saw that accused-appellant was wearing red or maroon shorts which was hanging around his knees and was naked above the waist. There was a white cloth on his head, covering only his forehead, cheeks and chin, but his eyes, nose and mouth were exposed.[7]

Realizing that Cristina was looking at him, accused-appellant covered her eyes with his left hand and poked the knife on her neck using his right hand.[8] At this instance, Corazon was awakened and saw accused-appellant about to ran away. She tried to chase accused-appellant but he was able to escape.[9]

Corazon returned to their room and embraced Carlalyn, who told her that she was raped by accused-appellant. After about half an hour, Corazon accompanied Carlalyn to the police station and lodged a complaint for rape against accused-appellant.[10] Thereafter, Corazon brought her daughter to Camp Crame for medical examination, which yielded the following results:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female subject. Breasts are conical with light brown areola and nipples from which no secretions could be pressed out. Abdomen is flat and soft. A linear abrasion is noted at the neck, measuring 3 x 0.2 cm, 3 cm right of the anterior midline.

There is moderate growth of pubic hair. Labia majora are full, convex and slightly gaping with pinkish brown labia minora presenting in between. On separating the same disclosed an abraded and congested posterior fourchette (sic) and an elastic, fleshy type hymen with deep fresh laceration at 5 o'clock and shallow fresh bleeding laceration at 3 and 9 o'clock positions. External vaginal orifice offers strong resistance to the introduction of the examining index finger. Vaginal canal is narrow with prominent rugosities. Cervix is firm and closed.

CONCLUSION:

Findings are compatible with recent loss of virginity.

Barring unforeseen complications, it is estimated that the above injury will resolve in 3 to 5 days.[11]

Accused-appellant, for his part, interposed the defense of denial and alibi. He claimed that he was at home when the alleged crime happened. He said that on the night of February 15, 1998, while he was watching television, his brother, Diogenes Ayungon, and his friend Carlo Cabotero, arrived. He stepped out to buy coke and Tanduay Rhum for his brother, then returned to watching television. He went to bed at around 3:00 o'clock a.m. of February 16, 1998. At about 5:30 to 5:40 o'clock of the same morning, he was awakened and surprised when his brother told him that police officers were looking for him. He later learned that he was being charged of raping Carlalyn Bargas, which accusation he vehemently denied.[12]

Accused-appellant's testimony was corroborated by defense witnesses, Diogenes Ayungon and Carlo Cabotero.

On November 25, 1998, the trial court found the version of the prosecution credible and rendered judgment convicting accused-appellant. The dispositive portion thereof reads:

WHEREFORE, premises considered, judgment is hereby rendered finding herein accused Robert Ayungon y Millebo guilty beyond reasonable doubt of the crime of Rape as defined and penalized under Art. 266-A par. 1 and Art. 266-B 1st par. of the Revised Penal Code as amended by RA 8353 in relation to Sec. 5(b) R.A. 7610, and sentencing him to suffer Reclusion Perpetua, and to indemnify private complainant, Carlalyn Bargas in the amount of P50,000.00 as moral damages and to pay the costs.

SO ORDERED.[13]

Hence, this appeal. Accused-appellant contends that:

I

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE COMPLAINANT AND HER WITNESSES.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.

The issue before the Court concerns primarily the credibility of witnesses. Long settled in criminal jurisprudence is the rule that the Supreme Court will not interfere with the judgment of the trial court in determining the credibility of witnesses unless there appear on record some facts or circumstances of weight and influence which have been overlooked or the significance of which has been misinterpreted by the same trial court. The reason behind this dictum is that the trial judge enjoys the peculiar advantage of observing directly and at first hand the witnesses' deportment and manner of testifying. He is, therefore, in a better position to form accurate impressions and conclusions on the basis thereof. [14]

In the present case, there are no facts and circumstances that would warrant the reversal of the trial court's judgment of conviction. After a careful review of the transcript of stenographic notes, the Court finds the testimony of private complainant to be clear, straightforward, and convincing. Thus -

PROS. RAMOLETE:

x x x x x x x x

Q.

What time were you awakened that early morning of February 16, 1998?

A.

On or about 4:30 in the morning, sir.

Q.

And kindly inform this Honorable Court the reason why you were awakened from your sleep?

A.

In that early morning, I felt that somebody was touching me, so I was awakened, sir. (Naramdaman ko pong may humahawak sa ano ko, kaya ako'y nagising).

PROS. RAMOLETE:

Before I continue, may I advise this witness to tell what was touched on her without hesitation.

Q.

You said somebody was touching your "ano ko", what is that "ano ko" you are referring to?

A.

My private part, sir. (Ang ari ko po).

PROS. RAMOLETE:

May I make it of record that the witness is already crying, your Honor.

Q.

And then, what happened next?

A.

When I was awakened, because I felt that somebody was touching my sex organ, I opened my eyes and I saw him, then he threatened me and told me not to make any noise, otherwise, he will kill me, sir.

Q.

And who was that person whom you saw and threatened you not to make any noise, otherwise, he will kill you?

A.

Buboy, sir.

Q.

Do you know the complete name of this Buboy?

A.

Yes, sir.

Q.

Kindly inform this Hon. Court the complete name of this Buboy?

A.

Robert Ayungon, sir.

Q.

If this Robert Ayungon is present inside the courtroom, will you be able to identify him?

A.

Yes, sir.

Q.

Kindly point to Robert Ayungon alias Buboy?

A.

That one, sir. (Witness pointed to a person who answered by the name of Robert Ayungon).

Q.

And you said you were threatened with death by this Robert Ayungon alias Buboy, what instrument, if any, did he use in threatening you?

A.

A knife, sir.

x x x x x x x x

PROS. RAMOLETE:

Q.

Kindly demonstrate to this Hon. Court how this Buboy threatened you with this kitchen knife?

A.

At first, he poked the knife on the left side of my neck and then he placed it across my neck with the pointed end pointing to my right side, sir.

Q.

And what hand did he use in holding the knife?

A.

His right hand, sir.

Q.

Now, and you demonstrated to this Hon. Court how the accused pointed to you this kitchen knife, where is the sharp end directed?

A.

On my neck, sir.

Q.

When you were awakened from your sleep since you felt somebody touching your sex organ, where was this accused positioned in relation to where you were then sleeping?

A.

He was on my left side, also lying, sir.

Q.

And after threatening you with this kitchen knife on your neck, as demonstrated by you, what happened next?

A.

He told me not to make any noise or else he will kill me and then he asked me to remove my shorts and panty, but I did not do it, sir.

Q.

And what happened next?

A.

When I did not want to remove my shorts and panty, he was the one who removed it because I did not really want to, sir.

Q.

Were you able to resist these advances of this accused?

A.

I was not able to resist because he was able to insert his sex organ into mine, sir.

Q.

And what did you feel when you felt his sex organ entered your sex organ?

A.

Of course, it was painful, sir.

Q.

And then what happened next?

A.

After that, he raised my T-shirt and kissed my breasts and he told me that if I will make any noise, he will kill me. And when I was trying to move, he uttered these remarks, "Pare, iabot mo nga ang itak at papatayin ko ito", sir.

Q.

And what happened next?

A.

After that, he repeatedly uttered, "Pare, kunin mo ang itak, pag hindi ito umayos, tatapusin ko na ito", sir.

Q.

And then what happened next?

A.

After that, I was making some movements because I wanted to wake up my sister because I had already suffered too much (nahihirapan na ako sa pangyayari), sir.

Q.

What else?

A.

After that, I cried aloud and my sister was awakened, sir.

Q.

You stated awhile ago that you tried to wake your sister, were you able to wake her up?

A.

I was able to wake her up because of my loud cry, sir.

Q.

Prior to the awakening of your sister, did you make any effort to awaken your sister?

A.

I wanted my right hand could reach my sister, but I was not able to do so because he was holding my hand, sir.

Q.

And when your sister was awakened by your cry, what happened next?

A.

He also threatened my sister and poked the knife at her, sir.

Q.

And how far was your sister then?

A.

She was a few inches away from me, sir.

Q.

Kindly demonstrate to this Hon. Court that inches you mentioned as to your distance from your sister?

A.

Only like this, sir.

ATTY. GARILLO:

About a foot or less than a foot.

PROS. RAMOLETE:

Q.

Can you demonstrate that inches that you mentioned as your distance from your sister?

A.

About twelve (12) inches, sir.

Q.

And you also stated awhile ago that even your sister was threatened with this kitchen knife, what happened next?

A.

He covered the eyes of my sister with his hand, but my sister was able to see him, and after that, he hurriedly ran away, sir.

Q.

I supposed, Madam Witness, that the room where you and your sister were sleeping then was dark, how were you able to recognize this Buboy?

A.

There was no light in the room where we were sleeping but in our kitchen there was and the door of that kitchen was open.

The room where we were sleeping and our kitchen are adjacent to each other, sir.

x x x x x x x x.[15]

The foregoing testimony of private complainant is corroborated by the results of the medical examination which disclosed that she sustained fresh hymenal lacerations at 3, 5, and 9 o'clock positions and that her condition indicated "recent loss of virginity." [16]

The desperate theory proffered by accused-appellant is that the rape story is but a mere concoction of private complainant who had a terrific crush on him. He added that private complainant must have been fantasizing about him as she identified him as the culprit because of his smell.

The contentions are totally devoid of merit. It is highly inconceivable that Carlalyn would fabricate a story that could sully her reputation and bring undue embarrassment and shame to herself as well as to her family. [17] The Court simply cannot accept the flimsy claim of accused-appellant that it is the alleged terrible crush on him of private complainant that drove her to concoct a story of defloration and to point to him as the rapist. Indeed, no young and decent Filipina would publicly admit that she was ravished and her honor tainted unless the same was true, for it would be instinctive on her part to protect her honor and obtain justice for the wicked acts committed upon her. Plainly, only a woman seeking justice with truth as her weapon could have braved this calvary. [18]

The alleged statement of private complainant to accused-appellant that "Ang kapal ng mukha mo Buboy, sa amoy mo pa lang kilalang kilala na kita," [19] if it was at all said by private complainant, is, to the mind of the Court, merely an expression of her utter disgust for accused-appellant. Contrary to his claim that he was identified because of his smell, the records reveal that he was actually positively identified by the private complainant because she saw and recognized him. Said identification cannot be put in doubt considering that the room where she was raped by accused-appellant was illuminated by the fluorescent lamp of the adjacent kitchen. She could not have been mistaken in her identification of accused-appellant because he is known to her even before the incident, being a friend of her brother.

Then too, the positive identification of accused-appellant was corroborated by the testimonies of private complainant's mother and sister who were likewise sleeping in the same room with private complainant. Though Cristina, private complainant's sister testified that there was a white cloth on the head of accused-appellant, she clarified that she recognized him because subject white cloth was covering only the forehead, cheeks and chin of accused-appellant leaving the eyes, mouth and nose exposed. This may be the reason why upon realizing that Cristina was looking at him, accused-appellant immediately covered her eyes with his left hand in a futile effort to prevent her from recognizing him.

Private complainant's credibility is further strengthened by her prompt report of the incident to the authorities. [20] The fact that the rape occurred at 4:30 in the morning of February 16, 1998, and she reported the matter at around 5:00 to 5:30 a.m. of the same day, shows that private complainant did not have the luxury of time to fabricate a rape story.

Unsubstantiated by clear and convincing evidence, denials and alibis are negative and deserve no probative weight especially in light of the testimonies of credible witnesses who have positively identified the accused as the culprit. Then too, it has been held that for alibi to prevail, the defense must establish by positive, clear and satisfactory proof that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission, and not merely that the accused was somewhere else, as accused-appellant claimed in the present case. [21] As established by the prosecution, the house of private complainant is only more or less 50 to 100 meters [22] from that of the accused-appellant's. A five-minute walk from the house of accused-appellant is all it would take for one to reach the house of private complainant. [23] Hence, accused-appellant failed to prove the physical impossibility required by law.

The fact that accused-appellant used a knife to threaten private complainant in the commission of the rape was alleged in the information and proven by the prosecution. Accordingly, the imposable penalty under Article 266-B, paragraph 1, of the Revised Penal Code as amended by Republic Act 8353, is reclusion perpetua to death.[24] There being neither mitigating nor aggravating circumstances attendant in the case at bar, the imposable penalty is reclusion perpetua.[25]

We note that the trial court awarded only moral damages to the private complainant and failed to award her civil indemnity. Civil indemnity of P50,000.00 is mandatorily awarded to rape victims in rape cases not qualified by any circumstance that would warrant the imposition of death penalty; it is distinct from and should not be denominated as moral damages which is based on different jural foundations and assessed by the court in the exercise of sound discretion.[26]

WHEREFORE, the decision of the Regional Trial Court of Rizal, Branch 76, in Criminal Case No. 3498-98, convicting accused-appellant of the crime of rape is **AFFIRMED**. Accused-appellant Robert Ayungon is hereby sentenced to suffer the penalty of reclusion perpetua and to pay private complainant the amount of P50,000.00 as civil indemnity in addition to the amount of P50,000.00 as moral damages. Costs against accused-appellant.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] Penned by Jose C. Reyes, Jr.

[2] Rollo, p. 4.

[3] Record, p. 18.

[4] TSN, March 26, 1998, pp. 4, 8-9 and 27.

[5] Id., pp. 4-6 and 16.

[6] Id., pp. 6-7 and 19-20.

[7] TSN, March 26, 1998, p. 7; April 1, 1998, pp. 5, 9, 11-16.

[8] April 1, 1998, p. 6.

[9] April 7, 1998, p. 4.

[10] Id., pp. 5-6.

[11] Record, p. 53.

[12] TSN, July 3, 1998, pp. 3, 5, 7-10.

[13] Rollo, p. 31.

[14] *People v. Matubis*, 288 SCRA 210, 219-220 [1998]; citing *People v. Luayon*, 260 SCRA 739 and *People v. Malunes*, 317 Phil. 378 [1995].

[15] TSN, March 26, 1998, pp. 4-8

[16] Record, p. 53.

[17] *People v. Roman*, 314 SCRA 425, 434 [1999].

[18] *People v. Villamor*, 297 SCRA 262, 272-273 [1998]; citing *People v. Pardillo, Jr.*, 282 SCRA 286 [1997] and *People v. Fundano*, 291 SCRA 356 [1998].

[19] TSN, July 3, 1998, p. 11.

[20] *People v. Perez*, 296 SCRA 17, 28 [1998]; citing *People v. Jaca*, 229 SCRA 332 [1994].

[21] *People v. Molina*, 311 SCRA 517, 527 [1999]; citing *People v. Dinglasan* 267 SCRA 26 1997]; and *People v. Magana*, 259 SCRA 380 [1996].

[22] TSN, March 26, 1998, p. 23

[23] TSN, April 1, 1998, p. 10.

[24] *People v. Aliviano*, G.R. No. 133985, July 10, 2000.

[25] Revised Penal Code, Article 63, par. 2.

[26] *People v. Marabillas*, 303 SCRA 352, 360 [1999]; citing *People v. Prades*, 293 SCRA 411 [1998].

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